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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,251	09/07/2001	Bernard Vallee	05-804	2488

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EXAMINER	
MCPARTLIN, SARAH BURNHAM	

ART UNIT	PAPER NUMBER
3636	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/936,251	Applicant(s) VALLEE, BERNARD	
	Examiner Sarah B. McPartlin	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8,10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8,10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 14, 2007 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 4 states that said distance (between said horizontal axle and said longitudinal axis of said underframe) is variable. Claim 1 states that the horizontal axle is a "fixed" horizontal axle. Furthermore, claim 1 states the fixed horizontal axle is determined with respect to the longitudinal axis of the underframe. Clarification is required.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-2, 4-5, 8 and 10-11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "an underframe having an essentially longitudinal axis and two which a backrest may be fixed, and with respect to which the fixed horizontal axle is determined" in lines 5-7. What is meant by the phrase "with respect to which the fixed horizontal axle is determined"? Did Applicant intend to state the horizontal axle is fixed with respect to the longitudinal axis of said underframe? Clarification is required. In the interest of compact prosecution, the examiner has assumed Applicant intended to state that the horizontal axle is fixed with respect to the longitudinal axis of said underframe. Claims 2, 4-5, 8 and 10-11 are rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2, 5, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bathrick et al. (5,094,508) in view of Sherman (3,594,037). With respect to claim 1, Bathrick et al. discloses a chair (10) with a seat (16) that folds about

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a fixed horizontal axle (51)(52) and which is intended, in particular, to equip halls that receive the public, such as lecture theatres and/or show halls, comprising at least an underframe (11)(12) having an essentially longitudinal axis (unlabeled) defined by frame members (18)(19)(30)(31) and two which a backrest (36)(37) may be fixed, and with respect to which the fixed horizontal axle (51)(52) is determined, said seat (16) comprising a first part (54)(55)(59) projecting forwards with respect to said fixed horizontal axle (51)(52) and a second part (50) projecting towards said underframe (11)(12), wherein said underframe (11)(12) contains a strut (40)(41)(42), one end of which is fixed to said second part (50) of said seat (16) by way of frame members (30)(31)(33).

With respect to claim 5, wherein a rail (54)(55) collaborates with said seat (16) to position said horizontal axle (51)(52) with respect to said seat (16) according to an angle B by which said seat is deployed.

With respect to claim 8, an opening is made in the underframe between first element (11) and second element (12) facing said second part (50) so as to partially accommodate said second part (50).

With respect to claim 10, wherein said longitudinal axis makes a determined angle beta with a vertical plane (figure 3 best discloses how the longitudinal axis of the frame (11)(12) runs at a slighting acute angle to the vertical), said underframe being assembled telescopically, a first element (11) of said underframe carrying said seat (16), by way of link (61) and said strut (40)(41)(42), and taking up vertical forces, while a

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second element (12) of said underframe (110)(12) takes up those forces which are orthogonal to said vertical plane which are encountered when the chair (10) is in use.

As disclosed above, Bathrick reveals all claimed elements with the exception of a gas strut.

Sherman teaches the use of a gas strut (40) for pivoting a seat.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to replace the strut (40)(41)(42) disclosed by Bathrick with a gas strut (40) as taught by Sherman. Such a modification would remove the need for the motor (40) required by Bathrick.

With respect to claim 2, it would have been an obvious matter of design choice to space the horizontal axle a distance between about 2 and 15 centimeters from the longitudinal axis of said underframe. Applicant has not stated that the claimed range is critical or that it solves any stated problem or is for a particular purpose. A distance approximately equal to the depth of the seat back (36)(37), as disclosed by Bathrick, as modified, would appear to function equally as well as the claimed distance

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bathrick et al. (5,094,508) in view of Sherman (3,594,037), as applied to claim 1 above, and further in view of Betherum (928,929). As disclosed above, Bathrick, as modified, reveals all claimed elements except a work surface.

Betherum teaches the incorporation of a work surface (14) mounted on a second element (13), which is telescopically received by a first element (5) of an underframe (5)(13).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the seat disclosed by Bathrick, as modified, with the teachings of Betherum. The incorporation of a work surface on the backside of the seat disclosed by Bathrick, as modified, would provide a convenient additional surface area for storage.

Response to Amendment/Arguments

9. The request for continued examination and accompanying amendment filed on June 14, 2007 has been considered in its entirety.

Applicant's arguments with respect to claims 1-2, 4-5 8 and 10-11 have been considered but are moot in view of the new ground(s) of rejection.

The Examiner contends above that Bathrick et al. disclose a fixed horizontal axle (51)(52). It is fixed a distance approximately equal to second part (50) from under frame (11)(12).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah B. McPartlin whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah B. McPartlin/
Patent Examiner
Art Unit 3636

SBM
June 28, 2007